Colorado, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective December 21, 1983.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-5420 or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

The Commission hereby amends § 271.703(d) of its regulations (18 CFR § 271-703(d) (1983)) to include an additional area of the Mancos "B" Formation as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued June 15, 1983 (48 FR 28112, June 20, 1983) [1] based on a recommendation by the State of Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that an additional area of the Mancos"B" Formation, located in Rio Blanco County, Colorado, be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the additional area of the Mancos "B" Formation located in Rio Blanco County, Colorado, meets the guidelines contained in § 271.703 (c))2).[2] The Commission adopts the Colorado recommendation.

This amendment shall become effective December 21, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—[AMENDED]

Part 271 is amended as follows:

1. The authority for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d) (112) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) Designated tight formations.

* * * * *

(112) *The Mancos "B" Formation in Colorado.* RM79-76 (Colorado-27)

(i) *Delineation of formation.* The Mancos "B" Formation is located in the Douglas Creek Arch area of western Colorado, in Rio Blanco County. The Mancos "B" Formation underlies Township 1 North, Range 101 West, Sections 17 through 20 and 29 through 32; Township 1 North, Range 102 West, Sections 7 through 9 and 13 through 36; Townships 1 North and 1 South, Range 103 West, all sections; Townships 1 North and 1 South, Range 104 West, Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 1 South, Range 102 West, Sections 1 through 10, 16 through 21, and 28 through 33; Township 2 South, Range 102 West, Sections 4 through 6; Township 2 South, Range 103 West, Sections 1 through 6, 17, 18, 20, 29, 32, and 33; and Township 2 South, Range 104 West, Sections 1 through 3 and 10 through 15. The additional area is contiguous to that part of the Mancos "B" Formation described above on its northern border. The addition to the Mancos "B" Formation is located in Rio Blanco County, Colorado, along the western flank and northern end of the Douglas Creek Arch in Township 2 South, Range 102 West N½ of Section 8 and N½ and SE¼ of Section 9. On its eastern border, the specified acreage is adjacent to lands described in § 271.703(d)(6).

(ii) *Depth.* The Mancos "B" Formation ranges in thickness from 150 to 325 feet. The average depth to the top of the Mancos "B" Formation is 3,000 feet. The additional area, located in the southern part of the Mancos "B" Formation, has an average depth to the top of the formation of 2,621 feet and an average gross thickness of 375 feet.

[FR Doc. 83-31628 Filed 11-23-83; 8:45 am]

BILLING CODE 6717-01-M

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

[2] The United States Department of the Interior, Bureau of Land Mangement concurs with Colorado's recommendation.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 147

[T.D. 83-240]

Drawback of Internal Revenue Tax and Transfer of Merchandise Entered for a Trade Fair From a Foreign-Trade Zone

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to drawback of internal revenue tax and transfer of merchandise entered for a trade fair from a foreign-trade zone, to substitute current references to Tariff Schedules of the United States item numbers. The foregoing changes are necessary to conform the regulations to statutory provisions. The document also amends the Customs Regulations to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted", and afterwards entered for consumption from a trade fair, can only be accomplished after the Foreign-Trade Zones Board of the Department of Commerce has approved such a transfer as being in the public interest. This nonsubstantive change is necessary to avoid possible misinterpretation of the regulations and clearly state statutory requirements.

EFFECTIVE DATE: This rule is effective on December 27, 1983.

FOR FURTHER INFORMATION CONTACT:

Legal aspects of Part 147, Customs Regulations: Donald Beach, Carriers, Drawback and Bonds Division (202-566-5865)

Legal aspects of Part 10, Customs Regulations: Russell X. Arnold, Classification and Value Division (202-566-5727)

Operational aspects: Herbert Geller, Duty Assessment Division (202-566-5307).

U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

This document implements Pub. L. 91-692 by amending the following two sections of the Customs Regulations: Section 10.3, Customs Regulations (19 CFR 10.3), and footnote 2 to that section relating to drawback of internal revenue taxes; and § 147.45, Customs Regulations (19 CFR 147.45), relating to the transfer of merchandise entered for a trade fair from a foreign-trade zone, to delete the reference to item 804.00, Tariff Schedules of the United States, (TSUS) (19 U.S.C. 1202) and substitute TSUS items 804.10 and/or 804.20, as appropriate.

Before Public Law 91-692, articles produced in the United States with the use of foreign articles imported under bond were excluded from entry under the provisions of TSUS item 804.00 as "American goods returned." Such articles would have to be entered and duty paid under another applicable provision of the TSUS. However, articles produced in the United States with the use of foreign articles and

exported with the benefit of drawback (the refund of a duty or tax lawfully collected because of a particular use of the merchandise on which the duty or tax was collected (section 313(a))), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)) could be imported under TSUS item 804.00 as "American goods returned" upon repayment of the drawback.

In the manufacture of aircraft in the United States, it is fairly common practice to use some foreign articles or materials. Export sales of aircraft produced in the United States are significant, and normally, the duty paid on the foreign articles used in the manufacture of such aircraft is subject to the drawback procedure set forth in Part 22, Customs Regulations (19 CFR Part 22), under which 99 percent of the duty paid on the foreign articles or materials is refunded upon exportation of the completed aircraft. In some instances, foreign articles for use in aircraft are temporarily entered to be repaired or altered under TSUS item 864.05, free of duty under bond (see §§ 10.38, and 10.39, Customs Regulations (19 CFR 10.38, 10.39)). Such temporary duty-free entry arrangement is preferred by some manufacturers since no large amount of capital is committed to duty payment for the period between the original entry of the foreign component and the drawback of the duty upon exportation of the aircraft.

Over the years both provisions, i.e., drawback and temporary importation under bond, have been used with respect to eliminating the cost of U.S. duty on foreign articles used in the domestic manufacture of aircraft which are subsequently sold abroad.

Competition in the sales of new aircraft in world markets is rising. Very often the "trade in" allowance for old aircraft is an important factor in obtaining contracts for sales of new aircraft abroad. Under these circumstances, the dutiable status of the old aircraft being "traded in" and returned to the United States becomes important.

In view of the importance of the "trade in" of old aircraft to sales of new aircraft abroad, Congress believed it important to provide similar Customs treatment to aircraft produced in the United States which are sold abroad and returned, whether the drawback or temporary importation bond procedure was used with respect to foreign components. Pub. L. 91–692 provided such Customs treatment for aircraft by amending the TSUS to delete item 804.00, which provided for articles previously exported from the United States which are excepted from free entry under any of several other provisions of Schedule 8, Part 1, TSUS, and are not otherwise free of duty, and inserting in its place (a) TSUS item 804.10, relating to aircraft exported from the United States with benefit of drawback or TSUS item 864.05, and (b) TSUS item 804.20, relating to other articles. In light of the foregoing, Customs published a notice in the **Federal Register** on June 17, 1983 (48 FR 27776), which proposed to amend section 10.3 and footnote 2 to that section and § 147.45 to delete the reference to TSUS item 804.00 and substitute a reference to TSUS items 804.10 and/or 804.20, as appropriate.

In addition to the above, the notice proposed to amend § 147.45 to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Foreign-Trade Zones Board ("Board") of the Department of Commerce has approved such a transfer as being in the public interest.

Section 147.45 does not, in its present form, make it clear that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Board has approved such a transfer as being in the public interest.

No comments were received in response to the notice. Further review of the matter within Customs has not revealed any reason why the amendments should not be adopted as proposed. Accordingly, the amendments set forth below are adopted without change from the June 17, 1983, **Federal Register** notice.

Executive Order 12291

These amendments will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. They are technical conforming amendments which clarify existing regulatory requirements without making any substantive change.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports.

19 CFR Part 147

Customs duties and inspection, Fairs and expositions, Imports.

Amendments to the Regulations

Parts 10 and 147, Customs Regulations (19 CFR Parts 10, 147), are amended as set forth below.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

Approved:

November 3, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Section 10.3 is amended/by removing (a) the reference to footnote 2 in paragraph (a) and footnote 2, (b) the words "item 804.00" wherever they appear in paragraph (c)(3) and inserting in their place the words "items 804.10 or 804.20" and (c) the words "item 804.00" in paragraph (f) and inserting in their place the words "item 804.20."

(R.S. 251, as amended, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1202 (Gen. Hdnt. 11) 1624))

PART 147—TRADE FAIRS

Section 147.45 is revised to read as follows:

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a trade fair from a foreign-trade zone in the status of "zone-restricted merchandise" can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote 1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States.

(R.S. 251, as amended, sections 1–21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnt. 11)1624))

[FR Doc. 83-31608 Filed 11-23-83; 8:45 am]

BILLING CODE 4820-20-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Quali-Tech Products, Inc., providing for the manufacture of 20- and 25-gram-per-pound tylosin premixes. The premixes will subsequently be used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: November 25, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Aministration, 5600 Fishers Lane, Rockville MD 20857; 301–443–4913.

SUPPLEMENTARY INFORMATION: Quali-Tech Products, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318, is the sponsor of a supplement to NADA 97–980 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of 20- and 25-gram-per-pound premixes subsequently used to make finished feeds for swine beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The basis for approval of this supplement is discussed in the freedom of information summary. Based on the data and information submitted, the supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(14) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(14) To 016968: 1, 2, 4, 8, and 10 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 20, 25, and 40 grams per pound, paragraph (f)(1), (i) through (vi) of this section.

* * * * *

Effective date. November 25, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 17, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-31557 Filed 11-23-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Buy America Requirements

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its Buy America regulation to implement procedures required by section 165 of the Surface Transportation Assistance Act (STAA) 1982 (Pub. L. 97–424). Section 165 provides with exceptions that funds authorized for Federal-aid highway projects may not be obligated unless the steel, cement, and manufactured products used in such projects are produced in the United States. The amendments are based on a review of comments received in response to an interim final rule (January 17, 1983) (48 FR 1946) and to amendments to that interim final rule (May 26, 1983) (48 FR 23631) which were issued to temporarily implement section 165. The final rule provides for application of the revised Buy America provisions to steel and cement regardless of project cost. The waiver exempting manufactured products other than steel and cement contained in the January 17, 1983, interim final rule is retained.

EFFECTIVE DATE: The final rule is effective December 27, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Construction and Maintenance Division, (202) 426–0392, or Ms. Ruth R. Johnson, Office of the Chief Counsel, (202) 426–0781, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The FHWA is issuing a final rule revising the existing Buy America regulation to implement procedures required by section 165 of the STAA of 1982. Section 165 provides that, with exceptions, funds authorized by the STAA of 1982, title 23 of the United States Code, the Urban Mass Transportation Act of 1964, or the STAA of 1978 may not be obligated for highway projects unless steel, cement, and manufactured products used in such projects are produced in the United States. The legislative language also requires Buy America to apply to all projects as opposed to previous provisions which only applied to projects costing more than $500,000. The STAA of 1982 also permits States to impose more stringent requirements than are imposed by section 165 and revises the total contract cost differential permitting the use of foreign materials from 10 percent to 25 percent.

An interim final rule was issued under emergency procedures on January 17, 1983, with an expiration date of September 30, 1983. Comments were requested on or before July 1, 1983. In that interim rule, the FHWA determined that it was in the public interest and not inconsistent with the legislative intent to temporarily waive the provisions of section 165 as they applied to manufactured products other than cement and steel, as well as to projects estimated to cost less than $450,000. On May 26, 1983, an amendment to the interim final rule was published in consideration of comments which had been received to that date. The primary

change was elimination of the $450,000 threshold, thereby making the Buy America provisions applicable to all federally funded highway projects regardles of size. The comment period on the interim final rule as amended was extended to August 1, 1983. On September 30, 1983, an emergency regulation was published which extended the expiration date of the interim final rule as amended, from September 30, 1983, until the date a final rule becomes effective.

Analysis of Comments to the Docket

On August 1, when Docket 83–2 closed, FHWA had received in excess of 560 comments. Members of Congress, foreign governments, manufacturers, suppliers, contractors, State and local agencies, and other parties were represented among the commenters. The FHWA fully considered the issues raised by these commenters as it developed this final regulation.

The principal issues brought out in the docket were that the threshold should be eliminated or lowered, that asphalt should be exempted in the final rule, and that Canadian clinker/cement imports should be permitted.

In general, domestic manufacturers and suppliers agreed with the interim rule; while importers, users, and transporters of imported products, foreign governments and foreign suppliers believe that the regulation reduces competition, restricts free trade, and is inflationary. The issues raised by the commenters were considered in light of the intent of Congress and how implementation of a Buy America rule would affect the administering agencies, the construction industry, and the general public.

The commenters could be characterized as follows:

Asphalt Paving Related Organizations—175 Commenters
Steel Fabricators/Suppliers/Erectors—114 Commenters
Ready-Mix Concrete Related Organizations/ Cement Transporters—56 Commenters
Domestic Steel Manufacturers/ Associations—25 Commenters
Private Citizens—18 Commenters
Cast Iron Related Organizations—17 Commenters
State and Local Highway Agencies/ Governments—17 Commenters
Oil Corporations/Refiners/Associations—15 Commenters
Congressional Comments—45 Congressmen
Domestic Cement Manufacturers—14 Commenters
Prestressed Concrete Related Organizations—12 Commenters
Others—82 Commenters

The following is a general discussion of the comments received in Docket 83–2:

I. Comments Regarding the $450,000 Threshold

Over 150 respondents commented on the FHWA decision, in the interim final rule published January 17, to temporarily waive the provisions of section 165 as they apply to projects estimated to cost less than $450,000. Most of the commenters on this issue objected to the $450,000 waiver with many noting that there was no legislative support for establishing any threshold of applicability. A number of respondents noted that limiting applicability of the Buy America provisions violates the letter and the spirit of the STAA of 1982.

Generally, respondents in favor of continuing the waiver included State and local highway agencies and groups representing foreign nations or foreign exporters. One of the State highway agencies commented that use of the $450,000 exclusion had been effective in holding down the cost of administering the Buy America regulations. Several commenters stated that the resource limitations of small local highway agencies would make the administration of the Buy America provisions difficult.

Respondents commenting on the waiver recommended a number of different threshold levels: 35 percent recommended total elimination; 20 percent favored a "drastically lower" threshold; 25 percent suggested placing the threshold at $50,000; 15 percent believe $100,000 is appropriate; and the remaining 5 percent suggested retaining the present $450,000 threshold level.

II. Comments Regarding Steel

Respondents who commented on steel related issues were generally concerned with prestressing strand.

A number of commenters, including State highway agencies and domestic manufacturers who produce strand from foreign high carbon steel rod, asked that prestressing strand be excluded from the list of steel products covered by Buy America provisions. Some of these commenters noted that the regulation should be concerned with the process of domestic manufacturing of prestressing strand from rod, rather than being concerned with the exclusive use of U.S. made rod. Other concerns included: disposition of current inventories; future availability of qualified strand; domestic manufacturers would raise prices and slow deliveries if foreign competition was excluded; strikes by domestic employees; and that elimination of some of the major manufacturers might cause supply problems in the event of an economic turnaround.

III. Comments Regarding Cement

Over 80 comments were received from respondents who were concerned with the extent of the Buy America provision as it applied to cement.

Many of the commenters in the northern States specifically asked for a waiver in section 165 to allow Canadian cement. These commenters included State highway agencies, ready-mix contractors, cement transporters and various concrete associations. They argued that: supply by the U.S. domestic cement industry is inconsistent and the Canadian cement industry has provided a stable source of cement; Canadian cement producers have major investments in the U.S. which contribute to local taxes, domestic employment, and local business activity for the purchase of equipment and maintenance; the cost of concrete would increase due to increased prices of the limited domestic cement; additional capital investments would be necessary for domestic concrete producers to handle and store this cement; exclusion of Canadian cement would disrupt the market and alienate the Canadian producers who for years have been a very stabilizing influence; and, that it would create a hardship on domestic transporters of cement manufactured in Canada.

Domestic cement manufacturers welcomed the Buy America rule. A number of them stated that the regulation should specifically state that cement made in the U.S. does not include cement made with imported clinker.

Comments from domestic manufacturers regarding the importation of foreign cement or clinker indicated that a rise in imports at the expense of an under-utilized domesitc capacity could well result in a problem similar to that of the U.S. steel industry attempting to compete against a flood of imports with existing domestic plants and equipment that are functionally obsolete. Approximately 90 percent of the production cycle is complete at the time the clinker has been produced and, therefore, 90 percent of the work force producing cement would be Canadians. Further they believed that the issues of public interest extend beyond the borders of an individual State. States should recognize in reviewing localized waiver requests that for every ton of Canadian clinker brought into this country, less work is available for American workers in the domestic cement industry.

IV. Comments Regarding Manufactured Products

A number of respondents objected to the waiver of the provisions of section 165 as they apply to manufactured products. The following comments were made: since American taxpayers are taxed to build highways, American industries should benefit; contractors should be compelled to use American made products or their bids should be rejected; the waiver is not in accord with the intent of Congress; the Buy America provisions should apply to construction machinery used on all projects funded by the STAA of 1982.

A number of respondents believe that the regulation should not allow imported manhole and drainage structure castings to be used on the new highway program. Their basis for this position was that the FHWA would be circumventing the intent of Congress; that there are a large number of foundries scattered throughout the United States with heavy inventories; and that cast metal products can arguably be defined as steel products within the intent of the legislation.

Because of administrative difficulties, several State highway agencies were opposed to the extension of the regulation to include manufactured products unless one of the following changes is made: (1) "Manufactured product" is defined so that only the final manufacturing process which produces a usable product is considered in the determination of foreign versus domestic character or (2), domestic items determined by the FHWA to be of inferior quality or in short supply should be excluded from the regulation or their application phased in to provde for development of domestic supplies. Several commenters noted that it is virtually impossible for a contracting agency to trace all components of some manufactured products incorporated into highway products; e.g.; signal controllers, glass for the signal heads, almost all electrical equipment, paints, and asphalt.

Comments were received from individual respondents interested in extending Buy America provisions to specific manufactured products; i.e., glass beads, pavement joint sealants, and wick drains. Comments were received from a number of respondents seeking to exempt certain specific manufactured products from Buy America provision based on considerations such as limited domestic availability. These products include fencing, ground rubber, laminated bridge bearings, and steel extrusions.

Miscellanous comments concerning manufactured products included a recommendation that imported materials already in storage should not be subject to the Buy America regulation. Commenters also recommended that the regulation should exempt material originating in the U.S. which is shipped to a foreign country to undergo additional processing then returned for use in highway construction.

V. Comments Regarding Oil Products

Over 200 comments were received regarding the application of Buy America provisions to oil products. Virtually all the commenters (asphalt paving contractors and associations, State highway agencies, oil companies, etc.) asked that oil and/or petroleum products and/or asphalt be exempted from the final rule. Of those comments received on oil products, 20 percent of the respondents requested an exemption for foreign crude in the final rule; 30 percent of the respondents recommended exempting all petroleum products; approximately 15 percent of the respondents asked for a waiver for asphalt; and approximately 30 percent asked to exempt crude oil and component by-products. Less than 5 percent recommended including petroleum products and/or asphalt.

Respondents asked that the Buy America provisions be waived for crude oil products, noting that the eastern U.S. is almost entirely dependent upon foreign crude for asphalt and related petroleum products. They argued that a ban on the use of foreign crude oil would be counterproductive resulting in prohibitively high prices and the consumption of a disproportionate share of one of the United States' most valuable and rapidly diminishing natural resources.

A limited number of commenters, all oil companies or refiners, asked that petroleum products, in some fashion, be covered under Buy America provisions. Their comments noted that although the refining capacity of the U.S. is more than adequate to supply current requirements for asphalt and other highway project related products, insufficient amounts of crude oil are produced domestically to satisfy demand. These commenters believe that the waiver should therefore apply permanently to the crude oil component of asphalt or other petroleum products used in federally assisted projects, but not to the asphalt and other petroleum products.

VI. Miscellaneous Comments of Interest

Some commenters stated that the 25 percent perference insures that the STAA of 1982 will in fact reinforce American jobs, industry, and tax base, and will revitalize America's roads at the lowest "real" cost to the taxpayer.

Others commented that the allowance of a 25 percent or greater difference in the foreign bid versus native bid is inflationary and very counterproductive.

There was, however, a small number (less than 2 percent) of respondents who expressed philosophical opposition to the Buy America concept. These commenters included a State highway agency, foreign governments, contractors, equipment suppliers, a ready mix concrete association, and others. The comments basically noted that the use or non-use of foreign products should be left to the discretion of the States. They believed that because open trade between countries has been very beneficial in the past, it should not be ruled out completely as these provisions would do. The Canadian authorities view the Buy America provisions of the STAA as possibly in violation of the U.S. General Agreement on Tariffs and Trade (GATT). They believe that the Buy America provisions nullify and impair trade concessions which have been agreed to during multilateral GATT negotiations which the U.S. is obligated to observe. Given the economic climate in Canada, the Canadian authorities noted that this type of U.S. action will significantly add to pressure in Canada for similar protectionist measures.

Discussion of Revisions

A summary of the revisions to the existing provisions in 23 CFR 635.410 follows.

I. Exclusion of Manufactured Products

Most responses from product manufacturers recommended that manufactured products should be excluded from Buy America and/or expressed only a passing interest in the regulation. In evaluating the comments from manufacturers and suppliers who wanted to be covered, the indication was that they favored free trade agreements; however, they protested unfair practices such as foreign subsidized dumping, and foreign import restrictions. Government intervention may well be warranted to protect against these practices, but protectionism in terms of a Buy America regulation on all manufactured products would not serve this purpose.

The FHWA believes the message that Congress, State/local governments, and others sent was not to apply an all-inclusive Buy America rule. Although the earlier Buy America statute, section

401 of the STAA of 1978, provided that both unmanufactured and manufactured "articles, materials, and supplies" were covered under Buy America, the FHWA noted that only foreign structural steel could have a significant nationwide effect on the cost of Federal-aid highway construction projects. Therefore, FHWA determined it was in the public interest to apply section 401 only to structural steel. Section 165 of the STAA of 1982 reinforced congressional intent that Buy America should be applied to steel products. Section 165, however, also specifically cites cement products as covered for the first time and it does not apply at all to raw materials. With respect to manufactured products, Section 165 does not differ in its coverage from section 401 of the STAA of 1978. Since FHWA has never covered all manufactured products under its Buy America regulation and Congress did not specifically direct a change in that policy in enacting section 165, FHWA does not believe that all manufactured products must be covered.

Although asphalt use on Federal-aid highway construction is greater than cement and nearly equal to steel, many comments were received expressing support for an exemption for that manufactured product. It should be noted that the congressional debate on Section 165 was focused on the American steel and cement industries and little or no attention was given to the effect of the provision on the asphalt market [128 Cong. Rec. H8984–8990 (daily ed. December 6, 1982)]. A large number of congressional commenters pointed this out in urging an exemption for asphalt. The FHWA considered the minimal use and economic effect of applying Buy America to manufactured products other than asphalt and noted the potential administrative burdens to the State and contractors if those products were covered.

The materials and products other than steel, cement, asphalt, and natural materials comprise a small percent of the highway construction program. The FHWA agrees with the commenters who noted that it is very difficult to identify the various materials and then trace their origin. A manufactured product such as a traffic controller which has many components is particularly difficult to trace. For these reasons and because unfair practices or other specific problems can be addressed by import laws such as title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 et. seq.) (Imposition of Antidumping Duties), the FHWA finds that it is in the public interest to waive the application of Buy America to manufactured products other than steel and cement manufactured products.

II. Inclusion of Steel Products

Although Congress included steel, cement, and manufactured products in the STAA, the FHWA interim rule which was effective following enactment of the law on January 6 applied only to steel products and cement products. Previous provisions applied only to structural steel and a determination of foreign or domestic character was based upon the place of manufacture and on the origin of more than 50 percent of the components. The determination to include only structural steel was based in part on the word "substantially" in the language of Section 401 (1978–STAA).

By denoting "steel" in Section 165 (1982 STAA), Congress called attention to their intent to make the coverage more encompassing. The legislative history is also clear on this point. Congressional concern that Federal money spent to improve highways should also aid U.S. industry is apparent in the first sentence of Section 165 which requires the Secretary of Transportation to ensure that funds authorized for Federal-aid highway projects would only buy U.S. made steel. The FHWA therefore, has expanded the Buy America rule to include all steel products.

III. Inclusion of Cement Products

The issue of cement coverage under Buy America centered around imports from Canada. Over 90 percent of the letters received on this issue asked that Canadian cement/clinker imports be exempt from Buy America.

The FHWA recognizes that the U.S. plants which currently import clinker and grind that material into cement will have to change their operations if they desire to continue to be a supply source for Federal-aid highway projects. They can do this in several ways. For example, they can expand to perform all manufacturing processes in the U.S. or only use domestically produced clinker. As another alternative, they will be able to segregate their production of cement made from U.S. and non-U.S. clinker either by using separate facilities or producing in separate production runs. The existing domestic industry, which utilizes foreign imports, will have to make some adjustments, to avoid job displacements resulting from Buy America. However, those adjustments should not be major.

Several commenters were concerned that applying Buy America to cement would force concrete batch plants to separate their domestic and foreign cement storage or to use only domestic cement. FHWA does not believe the impact of this requirement will be great. Normally, if a large quantity of concrete will be needed, new batch plants are set up on the site or existing batch plants are dedicated to the project. Therefore, the commenters' concerns would be valid only to a small amount of cement. It is possible that, if a concrete supplier is unwilling to comply with the Buy America requirement by separating its foreign and domestic cement and is dependent on Federal-aid contracts for continued profitability, it could be economically injured. However, Section 165 specifically requires that only domestic produced cement shall be used on Federal-aid highway construction. The congressional debate on section 165 clearly refers to cement [128 Congressional Record S14772 (daily edition December 15, 1982)]. Segregated cement storage is the best way to assure that only domestic cement will be incorporated into the work and the minimal burden this imposes is fully warranted.

Congress was very specific in including the term "cement" in the Buy America rule and in stating that cement products must be produced in the United States. "Produced in the U.S." means that all manufacturing processes whereby a raw material is changed or transformed into an article which, because of the process, is different from the original product, must occur domestically. Congress intended that the funds authorized by the Act would mainly benefit American workers and that increasing the demand for U.S. cement products would help the cement industry. Congress fully recognized that there would be a cost to implementing this rule. Therefore, the shortage of cement in a particular geographical area cannot be used as a justification to allow imports if the material is available anywhere domestically and can be supplied at a reasonable cost differential.

The FHWA, therefore, has included comment products in the Buy America rule. It is noted that administrative procedures are provided in the final rule to apply waivers in accordance with the legislation to afford some relief in those instances where the cement product inclusion creates situations which are not in the public interest or where the cement product is not produced in the United States in sufficient and reasonably available quantities of satisfactory quality.

IV. Program Coverage

The final rule requires that steel products and cement products be produced domestically, and only those products which are brought to the construction site and permanently incorporated into the completed project are covered. Construction materials, forms, etc., which remain in place at the contractor's convenience, but are not required by the contract, are not covered.

To further define the coverage, a domestic product is a manufactured steel or cement construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. Raw materials used in the steel and/or cement product may be imported. All manufacturing processes to produce steel and cement products must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, slag used in cement/concrete, etc., which are used in the manufacturing process to produce the steel or cement products. Waste products would include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks and the like. Also steel trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America.

V. Threshold

The STAA of 1978 (Public Law 95–599), passed in November of 1978 covered projects whose total cost exceeded $500,000. When FHWA implemented the STAA of 1978, it exempted the Buy America provisions from projects estimated to cost less than $450,000. This allowed the construction cost to exceed the estimate by more than 10 percent before the total project cost would exceed $500,000, thus triggering application of the Act.

The STAA of 1982 did not include a threshold even though there exists legislative colloquy indicating it would be continued. The FHWA, however, retained the threshold from the existing regulation in the interim final rule, noting that it would eliminate the administrative burden of enforcing Buy America on a major percentage of highway projects of small size. Effective June 10, 1983, it was decided that for the remainder of the comment period and until the final rule was published that the threshold should be eliminated. It was hoped that information based on experience without a threshold could be obtained before the final rule was implemented.

The FHWA has determined that the administrative burden of including a Buy America provision in all contracts does not warrant the reimposition of a threshold. Also, although there in no conclusive information, FHWA believes that the contractors' documentation of compliance with Buy America for steel and cement does not place a significant burden on them. The FHWA has eliminated the threshold making Buy America applicable to all projects. However, it should be noted that the final rule does permit a very minimal use of foreign steel and cement. The purpose of this is to eliminate placing an administrative burden on the States for truly minor items.

VI. Waivers

A State may request a waiver of the provisions of this section for specific projects and/or certain materials or products in specific locations. The basis for the request may be either a public interest finding or a determination that the product is not available domestically. An example of public interest would be a finding that applying Buy America would actually reduce rather than create jobs.

If the State finds, that a waiver request is warranted, it may document a justification for that waiver through the FHWA division office in its State and then to the Regional Federal Highway Administrator. There will be circumstances where a waiver should apply to an area larger than a region and possibly nationwide. In those cases, the Federal Highway Administrator will consider the merits of the problem and, if appropriate, approve a waiver which would afford uniform applications throughout the area affected. These cases would be forwarded to the Federal Highway Administrator by the Regional Administrator or arise when the Washington Headquarters ascertains that two regions may be acting on the same request.

VII. Compliance

The State's standard contract control procedures to assure that the contractor meets the terms of the contract shall be applicable to verify compliance with Buy America. It is presumed that a bidder who enters into a contract with a State agrees to comply with the Buy America provision. The States are expected to provide sufficient oversight to ensure compliance with the Buy America provisions. Penalties should be applied as may be appropriate in accordance with the standard State and Federal-aid procedures.

VIII. Legislative Changes

Section 165 sets forth two other requirements which supersede the previous requirements contained in section 401 of the 1978 STAA. The legislative language permits States to impose more stringent requirements than are imposed by section 165. Previously, only those State Buy America provisions which were in effect prior to the enactment of the STAA of 1978 were permitted. The STAA of 1982 also revises the total contract cost differential permitting the use of foreign materials from 10 percent to 25 percent. These two changs are incorporated into the final rule.

IX. Procedural Changes

The final rule implements three procedural changes from the interim final rule. The first involves confusion with the provisions in the STAA of 1982 which permit States to impose more stringent Buy America requirements than are contained in the Federal regulation.

Several comments were received which showed that this provision was being misunderstood. Specifically, State legislatures were considering "Buy-State materials and products preference" for Federal-aid highway work. Such a provision in Federal-aid contracts would be in violation of the longstanding prohibition contained in 23 CFR 635.409(a) against State restrictions on the use of articles or materials made or produced in any other State, territory, or possession of the United States. The issue addressed in section 165 of the STAA of 1982 is that certain materials must be produced in the United States rather than in foreign countries. This is obvious from the inclusion of the words "foreign countries" in the aforementioned provision regarding more stringent State requirements. Section 635.410(a) is being revised to clarify this matter.

The second procedural change is necessary to clarify the application of the alternate bid provisions. The previous regulation required alternate bids for foreign and domestic structural steel. Since the STAA of 1982 permits States to impose more stringent Buy America requirements than are imposed by section 165, it has been pointed out that a State could elect to prohibit the use of foreign steel or cement even on projects which could allow alternate bids under § 635.410(b)(3). Therefore, the final rule is simplified by replacing the alternate bid requirements with a

statement that alternate bids for foreign and domestic materials may be included on any Federal-aid highway project at the State's election. The FHWA still encourages States to consider alternate bids on projects where foreign materials are likely to be competitive even with the 25 percent cost differential.

Third, § 635.410(b)(2) has been deleted. The paragraph has provided that certification acceptance (CA) procedures would apply to the Buy America provisions. However, section 165 of the STAA of 1982 is not incorporated into title 23 U.S.C. to which CA is applicable.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, under the regulatory policies and procedures of the DOT, this rulemaking action is considered significant based on the public interest involved.

A regulatory evaluation/regulatory flexibility assessment has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. P. E. Cunningham at the address provided under the heading **"FOR FURTHER INFORMATION CONTACT."** The FHWA has determined that this action will not have a significant economic impact on a substantial number of small entities based upon the evaluation prepared.

List of Subjects in 23 CFR Part 635

Buy America, Government contracts, Grants programs—transportation, Highways and roads.

In consideration of the foregoing, and under the authority of 23 U.S.C. 315, section 165, STAA of 1982, Pub. L. 97-424, 96 Stat. 2136, and 49 CFR 1.48(b), the FHWA amends Part 635, Subpart D, by revising § 635.410 of 23 CFR to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on November 21, 1983.

R. A. Barnhart,

Administrator, Federal Highway Administration.

PART 635—[AMENDED]

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or (ii) if cement or steel materials are to be used, all manufacturing processes for these materials must occur in the United States.

(2) The State has standard contract provisions that require the use of domestic materials and products, including cement and steel materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and/or cement materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and/or cement materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and/or cement materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and/or cement materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and/or cement materials by more than 25 percent.

(4) When cement and steel materials are used in a project, the requirements of this section do not prevent a minimal use of foreign cement and steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and/or cement products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if:

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and cement materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the **Federal Register** for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

(23 U.S.C. 315; sec. 165, Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097; 49 CFR 1.48(b).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 7922]

Employment Taxes; Backup Withholding and Due Diligence Relating to Taxpayer Identification Numbers and Certification Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to backup withholding and due diligence relating